

ASSEMBLY BILL

No. 96

Introduced by Assembly Member Cohn
(Principal coauthor: Senator Alquist)

January 11, 2005

An act to amend Section 1203.097 of the Penal Code, relating to probation.

LEGISLATIVE COUNSEL'S DIGEST

AB 96, as introduced, Cohn. Terms of probation: domestic violence: child support.

Existing law specifies the conditions of probation for a crime of domestic violence, including a minimum payment of \$400 to domestic violence related funds and successful completion of a batterer's treatment at the defendant's own expense, based upon ability to pay. Existing law also provides that, in lieu of a fine, the defendant may be ordered to make payments to a battered women's shelter or pay restitution, based upon ability to pay. Existing law provides that no order to make payments to a battered women's shelter shall be imposed if it would impair the defendant's ability to pay court-ordered child support. Existing law also provides that if, upon motion, the court finds that the defendant has not complied with a condition of probation, the court shall proceed with further sentencing.

This bill would add payment of any court-ordered child support as a condition of probation for domestic violence.

Because this bill would change the conditions for probation for various crimes of domestic violence, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1203.097 of the Penal Code, as
2 amended by Section 1 of Chapter 431 of the Statutes of 2003, is
3 amended to read:

4 1203.097. (a) If a person is granted probation for a crime in
5 which the victim is a person defined in Section 6211 of the
6 Family Code, the terms of probation shall include all of the
7 following:

8 (1) A minimum period of probation of 36 months, which may
9 include a period of summary probation as appropriate.

10 (2) A criminal court protective order protecting the victim
11 from further acts of violence, threats, stalking, sexual abuse, and
12 harassment, and, if appropriate, containing residence exclusion or
13 stay-away conditions.

14 (3) Notice to the victim of the disposition of the case.

15 (4) Booking the defendant within one week of sentencing if
16 the defendant has not already been booked.

17 (5) *The defendant shall pay all court-ordered child support.*

18 (6) A minimum payment by the defendant of four hundred
19 dollars (\$400) to be disbursed as specified in this paragraph. If,
20 after a hearing in court on the record, the court finds that the
21 defendant does not have the ability to pay, the court may reduce
22 or waive this fee.

23 Two-thirds of the moneys deposited with the county treasurer
24 pursuant to this section shall be retained by counties and
25 deposited in the domestic violence programs special fund created
26 pursuant to Section 18305 of the Welfare and Institutions Code,
27 to be expended for the purposes of Chapter 5 (commencing with
28 Section 18290) of Part 6 of Division 9 of the Welfare and
29 Institutions Code. The remainder shall be transferred, once a
30 month, to the Controller for deposit in equal amounts in the
31 Domestic Violence Restraining Order Reimbursement Fund and

1 in the Domestic Violence Training and Education Fund, which
2 are hereby created, in an amount equal to one-third of funds
3 collected during the preceding month. In no event may the funds
4 transferred to the Controller be less than one hundred thirty-three
5 dollars (\$133) for each defendant. However, if the court orders
6 the defendant to pay less than two hundred dollars (\$200)
7 because of his or her inability to pay, the state shall receive
8 two-thirds of the payment. Moneys deposited into these funds
9 pursuant to this section shall be available upon appropriation by
10 the Legislature and shall be distributed each fiscal year as
11 follows:

12 (A) Funds from the Domestic Violence Restraining Order
13 Reimbursement Fund shall be distributed to local law
14 enforcement or other criminal justice agencies for state-mandated
15 local costs resulting from the notification requirements set forth
16 in subdivision (b) of Section 6380 of the Family Code, based on
17 the annual notification from the Department of Justice of the
18 number of restraining orders issued and registered in the state
19 domestic violence restraining order registry maintained by the
20 Department of Justice, for the development and maintenance of
21 the domestic violence restraining order databank system.

22 (B) Funds from the Domestic Violence Training and
23 Education Fund shall support a statewide training and education
24 program to increase public awareness of domestic violence and
25 to improve the scope and quality of services provided to the
26 victims of domestic violence. Grants to support this program
27 shall be awarded on a competitive basis and be administered by
28 the State Department of Health Services, in consultation with the
29 statewide domestic violence coalition, which is eligible to receive
30 funding under this section.

31 ~~(6)~~

32 (7) Successful completion of a batterer's program, as defined
33 in subdivision (c), or if none is available, another appropriate
34 counseling program designated by the court, for a period not less
35 than one year with periodic progress reports by the program to
36 the court every three months or less and weekly sessions of a
37 minimum of two hours class time duration. The defendant shall
38 attend consecutive weekly sessions, unless granted an excused
39 absence for good cause by the program for no more than three
40 individual sessions during the entire program, and shall complete

1 the program within 18 months, unless, after a hearing, the court
2 finds good cause to modify the requirements of consecutive
3 attendance or completion within 18 months.

4 ~~(7)–~~

5 (8) (A) (i) The court shall order the defendant to comply with
6 all probation requirements, including the requirements to attend
7 counseling, keep all program appointments, and pay program
8 fees based upon the ability to pay.

9 (ii) The terms of probation for offenders shall not be lifted
10 until all reasonable fees due to the counseling program have been
11 paid in full, but in no case shall probation be extended beyond
12 the term provided in subdivision (a) of Section 1203.1. If the
13 court finds that the defendant does not have the ability to pay the
14 fees based on the defendant's changed circumstances, the court
15 may reduce or waive the fees.

16 (B) Upon request by the batterer's program, the court shall
17 provide the defendant's arrest report, prior incidents of violence,
18 and treatment history to the program.

19 ~~(8)–~~

20 (9) The court also shall order the defendant to perform a
21 specified amount of appropriate community service, as
22 designated by the court. The defendant shall present the court
23 with proof of completion of community service and the court
24 shall determine if the community service has been satisfactorily
25 completed. If sufficient staff and resources are available, the
26 community service shall be performed under the jurisdiction of
27 the local agency overseeing a community service program.

28 ~~(9)–~~

29 (10) If the program finds that the defendant is unsuitable, the
30 program shall immediately contact the probation department or
31 the court. The probation department or court shall either
32 recalendar the case for hearing or refer the defendant to an
33 appropriate alternative batterer's program.

34 ~~(10)–~~

35 (11) (A) Upon recommendation of the program, a court shall
36 require a defendant to participate in additional sessions
37 throughout the probationary period, unless it finds that it is not in
38 the interests of justice to do so, states its reasons on the record,
39 and enters them into the minutes. In deciding whether the

1 defendant would benefit from more sessions, the court shall
2 consider whether any of the following conditions exist:

3 (i) The defendant has been violence free for a minimum of six
4 months.

5 (ii) The defendant has cooperated and participated in the
6 batterer's program.

7 (iii) The defendant demonstrates an understanding of and
8 practices positive conflict resolution skills.

9 (iv) The defendant blames, degrades, or has committed acts
10 that dehumanize the victim or puts at risk the victim's safety,
11 including, but not limited to, molesting, stalking, striking,
12 attacking, threatening, sexually assaulting, or battering the
13 victim.

14 (v) The defendant demonstrates an understanding that the use
15 of coercion or violent behavior to maintain dominance is
16 unacceptable in an intimate relationship.

17 (vi) The defendant has made threats to harm anyone in any
18 manner.

19 (vii) The defendant has complied with applicable requirements
20 under paragraph (6) of subdivision (c) or subparagraph (C) to
21 receive alcohol counseling, drug counseling, or both.

22 (viii) The defendant demonstrates acceptance of responsibility
23 for the abusive behavior perpetrated against the victim.

24 (B) The program shall immediately report any violation of the
25 terms of the protective order, including any new acts of violence
26 or failure to comply with the program requirements, to the court,
27 the prosecutor, and, if formal probation has been ordered, to the
28 probation department. The probationer shall file proof of
29 enrollment in a batterer's program with the court within 30 days
30 of conviction.

31 (C) Concurrent with other requirements under this section, in
32 addition to, and not in lieu of, the batterer's program, and unless
33 prohibited by the referring court, the probation department or the
34 court may make provisions for a defendant to use his or her
35 resources to enroll in a chemical dependency program or to enter
36 voluntarily a licensed chemical dependency recovery hospital or
37 residential treatment program that has a valid license issued by
38 the state to provide alcohol or drug services to receive program
39 participation credit, as determined by the court. The probation
40 department shall document evidence of this hospital or

1 residential treatment participation in the defendant's program
2 file.

3 ~~(11)–~~

4 (12) The conditions of probation may include, in lieu of a fine,
5 but not in lieu of the fund payment required under paragraph (5),
6 one or more of the following requirements:

7 (A) That the defendant make payments to a battered women's
8 shelter, up to a maximum of five thousand dollars (\$5,000).

9 (B) That the defendant reimburse the victim for reasonable
10 expenses that the court finds are the direct result of the
11 defendant's offense.

12 For any order to pay a fine, to make payments to a battered
13 women's shelter, or to pay restitution as a condition of probation
14 under this subdivision, the court shall make a determination of
15 the defendant's ability to pay. Determination of a defendant's
16 ability to pay may include his or her future earning capacity. A
17 defendant shall bear the burden of demonstrating lack of his or
18 her ability to pay. Express findings by the court as to the factors
19 bearing on the amount of the fine shall not be required. In no
20 event shall any order to make payments to a battered women's
21 shelter be made if it would impair the ability of the defendant to
22 pay direct restitution to the victim or court-ordered child support.
23 When the injury to a married person is caused, in whole or in
24 part, by the criminal acts of his or her spouse in violation of this
25 section, the community property shall not be used to discharge
26 the liability of the offending spouse for restitution to the injured
27 spouse, as required by Section 1203.04, as operative on or before
28 August 2, 1995, or Section 1202.4, or to a shelter for costs with
29 regard to the injured spouse, until all separate property of the
30 offending spouse is exhausted.

31 ~~(12)–~~

32 (13) If it appears to the prosecuting attorney, the court, or the
33 probation department that the defendant is performing
34 unsatisfactorily in the assigned program, is not benefiting from
35 counseling, or has engaged in criminal conduct, upon request of
36 the probation officer, the prosecuting attorney, or on its own
37 motion, the court, as a priority calendar item, shall hold a hearing
38 to determine whether further sentencing should proceed. The
39 court may consider factors, including, but not limited to, any
40 violence by the defendant against the former or a new victim

1 while on probation and noncompliance with any other specific
2 condition of probation. If the court finds that the defendant is not
3 performing satisfactorily in the assigned program, is not
4 benefiting from the program, has not complied with a condition
5 of probation, or has engaged in criminal conduct, the court shall
6 terminate the defendant's participation in the program and shall
7 proceed with further sentencing.

8 (b) If a person is granted formal probation for a crime in which
9 the victim is a person defined in Section 6211 of the Family
10 Code, in addition to the terms specified in subdivision (a), all of
11 the following shall apply:

12 (1) The probation department shall make an investigation and
13 take into consideration the defendant's age, medical history,
14 employment and service records, educational background,
15 community and family ties, prior incidents of violence, police
16 report, treatment history, if any, demonstrable motivation, and
17 other mitigating factors in determining which batterer's program
18 would be appropriate for the defendant. This information shall be
19 provided to the batterer's program if it is requested. The
20 probation department shall also determine which community
21 programs the defendant would benefit from and which of those
22 programs would accept the defendant. The probation department
23 shall report its findings and recommendations to the court.

24 (2) The court shall advise the defendant that the failure to
25 report to the probation department for the initial investigation, as
26 directed by the court, or the failure to enroll in a specified
27 program, as directed by the court or the probation department,
28 shall result in possible further incarceration. The court, in the
29 interests of justice, may relieve the defendant from the
30 prohibition set forth in this subdivision based upon the
31 defendant's mistake or excusable neglect. Application for this
32 relief shall be filed within 20 court days of the missed deadline.
33 This time limitation may not be extended. A copy of any
34 application for relief shall be served on the office of the
35 prosecuting attorney.

36 (3) After the court orders the defendant to a batterer's
37 program, the probation department shall conduct an initial
38 assessment of the defendant, including, but not limited to, all of
39 the following:

40 (A) Social, economic, and family background.

- 1 (B) Education.
- 2 (C) Vocational achievements.
- 3 (D) Criminal history.
- 4 (E) Medical history.
- 5 (F) Substance abuse history.
- 6 (G) Consultation with the probation officer.
- 7 (H) Verbal consultation with the victim, only if the victim
- 8 desires to participate.

9 (I) Assessment of the future probability of the defendant
10 committing murder.

11 (4) The probation department shall attempt to notify the victim
12 regarding the requirements for the defendant's participation in
13 the batterer's program, as well as regarding available victim
14 resources. The victim also shall be informed that attendance in
15 any program does not guarantee that an abuser will not be
16 violent.

17 (c) The court or the probation department shall refer
18 defendants only to batterer's programs that follow standards
19 outlined in paragraph (1), which may include, but are not limited
20 to, lectures, classes, group discussions, and counseling. The
21 probation department shall design and implement an approval
22 and renewal process for batterer's programs and shall solicit
23 input from criminal justice agencies and domestic violence
24 victim advocacy programs.

25 (1) The goal of a batterer's program under this section shall be
26 to stop domestic violence. A batterer's program shall consist of
27 the following components:

28 (A) Strategies to hold the defendant accountable for the
29 violence in a relationship, including, but not limited to, providing
30 the defendant with a written statement that the defendant shall be
31 held accountable for acts or threats of domestic violence.

32 (B) A requirement that the defendant participate in ongoing
33 same-gender group sessions.

34 (C) An initial intake that provides written definitions to the
35 defendant of physical, emotional, sexual, economic, and verbal
36 abuse, and the techniques for stopping these types of abuse.

37 (D) Procedures to inform the victim regarding the
38 requirements for the defendant's participation in the intervention
39 program as well as regarding available victim resources. The

1 victim also shall be informed that attendance in any program
2 does not guarantee that an abuser will not be violent.

3 (E) A requirement that the defendant attend group sessions
4 free of chemical influence.

5 (F) Educational programming that examines, at a minimum,
6 gender roles, socialization, the nature of violence, the dynamics
7 of power and control, and the effects of abuse on children and
8 others.

9 (G) A requirement that excludes any couple counseling or
10 family counseling, or both.

11 (H) Procedures that give the program the right to assess
12 whether or not the defendant would benefit from the program and
13 to refuse to enroll the defendant if it is determined that the
14 defendant would not benefit from the program, so long as the
15 refusal is not because of the defendant's inability to pay. If
16 possible, the program shall suggest an appropriate alternative
17 program.

18 (I) Program staff who, to the extent possible, have specific
19 knowledge regarding, but not limited to, spousal abuse, child
20 abuse, sexual abuse, substance abuse, the dynamics of violence
21 and abuse, the law, and procedures of the legal system.

22 (J) Program staff who are encouraged to utilize the expertise,
23 training, and assistance of local domestic violence centers.

24 (K) A requirement that the defendant enter into a written
25 agreement with the program, which shall include an outline of
26 the contents of the program, the attendance requirements, the
27 requirement to attend group sessions free of chemical influence,
28 and a statement that the defendant may be removed from the
29 program if it is determined that the defendant is not benefiting
30 from the program or is disruptive to the program.

31 (L) A requirement that the defendant sign a confidentiality
32 statement prohibiting disclosure of any information obtained
33 through participating in the program or during group sessions
34 regarding other participants in the program.

35 (M) Program content that provides cultural and ethnic
36 sensitivity.

37 (N) A requirement of a written referral from the court or
38 probation department prior to permitting the defendant to enroll
39 in the program. The written referral shall state the number of
40 minimum sessions required by the court.

1 (O) Procedures for submitting to the probation department all
2 of the following uniform written responses:

3 (i) Proof of enrollment, to be submitted to the court and the
4 probation department and to include the fee determined to be
5 charged to the defendant, based upon the ability to pay, for each
6 session.

7 (ii) Periodic progress reports that include attendance, fee
8 payment history, and program compliance.

9 (iii) Final evaluation that includes the program's evaluation of
10 the defendant's progress, using the criteria set forth in paragraph
11 (4) of subdivision (a) and recommendation for either successful
12 or unsuccessful termination or continuation in the program.

13 (P) A sliding fee schedule based on the defendant's ability to
14 pay. The batterer's program shall develop and utilize a sliding fee
15 scale that recognizes both the defendant's ability to pay and the
16 necessity of programs to meet overhead expenses. An indigent
17 defendant may negotiate a deferred payment schedule, but shall
18 pay a nominal fee, if the defendant has the ability to pay the
19 nominal fee. Upon a hearing and a finding by the court that the
20 defendant does not have the financial ability to pay the nominal
21 fee, the court shall waive this fee. The payment of the fee shall be
22 made a condition of probation if the court determines the
23 defendant has the present ability to pay the fee. The fee shall be
24 paid during the term of probation unless the program sets other
25 conditions. The acceptance policies shall be in accordance with
26 the scaled fee system.

27 (2) The court shall refer persons only to batterer's programs
28 that have been approved by the probation department pursuant to
29 paragraph (5). The probation department shall do both of the
30 following:

31 (A) Provide for the issuance of a provisional approval,
32 provided that the applicant is in substantial compliance with
33 applicable laws and regulations and an urgent need for approval
34 exists. A provisional approval shall be considered an
35 authorization to provide services and shall not be considered a
36 vested right.

37 (B) If the probation department determines that a program is
38 not in compliance with standards set by the department, the
39 department shall provide written notice of the noncompliant
40 areas to the program. The program shall submit a written plan of

1 corrections within 14 days from the date of the written notice on
2 noncompliance. A plan of correction shall include, but not be
3 limited to, a description of each corrective action and timeframe
4 for implementation. The department shall review and approve all
5 or any part of the plan of correction and notify the program of
6 approval or disapproval in writing. If the program fails to submit
7 a plan of correction or fails to implement the approved plan of
8 correction, the department shall consider whether to revoke or
9 suspend approval and, upon revoking or suspending approval,
10 shall have the option to cease referrals of defendants under this
11 section.

12 (3) No program, regardless of its source of funding, shall be
13 approved unless it meets all of the following standards:

14 (A) The establishment of guidelines and criteria for education
15 services, including standards of services that may include
16 lectures, classes, and group discussions.

17 (B) Supervision of the defendant for the purpose of evaluating
18 the person's progress in the program.

19 (C) Adequate reporting requirements to ensure that all persons
20 who, after being ordered to attend and complete a program, may
21 be identified for either failure to enroll in, or failure to
22 successfully complete, the program or for the successful
23 completion of the program as ordered. The program shall notify
24 the court and the probation department, in writing, within the
25 period of time and in the manner specified by the court of any
26 person who fails to complete the program. Notification shall be
27 given if the program determines that the defendant is performing
28 unsatisfactorily or if the defendant is not benefiting from the
29 education, treatment, or counseling.

30 (D) No victim shall be compelled to participate in a program
31 or counseling, and no program may condition a defendant's
32 enrollment on participation by the victim.

33 (4) In making referrals of indigent defendants to approved
34 batterer's programs, the probation department shall apportion
35 these referrals evenly among the approved programs.

36 (5) The probation department shall have the sole authority to
37 approve a batterer's program for probation. The program shall be
38 required to obtain only one approval but shall renew that
39 approval annually.

1 (A) The procedure for the approval of a new or existing
2 program shall include all of the following:

3 (i) The completion of a written application containing
4 necessary and pertinent information describing the applicant
5 program.

6 (ii) The demonstration by the program that it possesses
7 adequate administrative and operational capability to operate a
8 batterer's treatment program. The program shall provide
9 documentation to prove that the program has conducted
10 batterer's programs for at least one year prior to application. This
11 requirement may be waived under subparagraph (A) of paragraph
12 (2) if there is no existing batterer's program in the city, county,
13 or city and county.

14 (iii) The onsite review of the program, including monitoring of
15 a session to determine that the program adheres to applicable
16 statutes and regulations.

17 (iv) The payment of the approval fee.

18 (B) The probation department shall fix a fee for approval not
19 to exceed two hundred fifty dollars (\$250) and for approval
20 renewal not to exceed two hundred fifty dollars (\$250) every
21 year in an amount sufficient to cover its costs in administering
22 the approval process under this section. No fee shall be charged
23 for the approval of local governmental entities.

24 (C) The probation department has the sole authority to
25 approve the issuance, denial, suspension, or revocation of
26 approval and to cease new enrollments or referrals to a batterer's
27 program under this section. The probation department shall
28 review information relative to a program's performance or failure
29 to adhere to standards, or both. The probation department may
30 suspend or revoke any approval issued under this subdivision or
31 deny an application to renew an approval or to modify the terms
32 and conditions of approval, based on grounds established by
33 probation, including, but not limited to, either of the following:

34 (i) Violation of this section by any person holding approval or
35 by a program employee in a program under this section.

36 (ii) Misrepresentation of any material fact in obtaining the
37 approval.

38 (6) For defendants who are chronic users or serious abusers of
39 drugs or alcohol, standard components in the program shall
40 include concurrent counseling for substance abuse and violent

1 behavior, and in appropriate cases, detoxification and abstinence
2 from the abused substance.

3 (7) The program shall conduct an exit conference that assesses
4 the defendant's progress during his or her participation in the
5 batterer's program.

6 (d) This section shall remain in effect only until January 1,
7 2007, and as of that date is repealed, unless a later enacted
8 statute, that is enacted before January 1, 2007, deletes or extends
9 that date.

10 SEC. 2. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 the only costs that may be incurred by a local agency or school
13 district will be incurred because this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the
15 penalty for a crime or infraction, within the meaning of Section
16 17556 of the Government Code, or changes the definition of a
17 crime within the meaning of Section 6 of Article XIII B of the
18 California Constitution.